

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT L. RUCKER,
Plaintiff,
-vs-
CITY OF PITTSBURGH, TIMOTHY
MATSON, individually and, in
his official capacity, LEROY
HAMMOND-SHROCK, individually
and in his official capacity,
OFFICER JOHN DOE, (unidentified
in name and number),
individually
and in his official capacity,
Defendants.

Civil
Action
No.
08-1213

DEPOSITION OF: DAVID WRIGHT

DATE: November 6, 2009
Friday, 9:38 a.m.

LOCATION: City of Pittsburgh
Department of Law
Room 313 City-County Bldg.
414 Grant Street
Pittsburgh, PA 15219-2453

TAKEN BY: Plaintiff

REPORTED BY: Beth E. Welsh
Notary Public
QCR Reference No. BW2046

1 DEPOSITION OF DAVID WRIGHT,
2 a witness, called by the Plaintiff for examination,
3 in accordance with the Federal Rules of Civil
4 Procedure, taken by and before Beth E. Welsh, a Court
5 Reporter and Notary Public in and for the
6 Commonwealth of Pennsylvania, at the offices of
7 Michael E. Kennedy, Esquire, City of Pittsburgh
8 Department of Law, Room 313 City-County Building,
9 414 Grant Street, Pittsburgh, Pennsylvania, on
10 Friday, November 6, 2009, commencing at 9:38 a.m.

APPEARANCES:

FOR THE PLAINTIFF:
Kelly S. Graham, Esquire
SCANLON & SANSONE
2300 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
412.281.9194

FOR THE DEFENDANT CITY OF PITTSBURGH:

Michael E. Kennedy, Esquire
City of Pittsburgh Department of Law
Room 313 City-County Building
414 Grant Street
Pittsburgh, PA 15219-2453
412.255.2677

FOR THE DEFENDANTS TIMOTHY MATSON, individually
and, in his official capacity, LEROY HAMMOND-SCHROCK,
individually and in his official capacity, OFFICER
JOHN DOE, (unidentified in name and number),
individually and in his official capacity:

Bryan Campbell, Esquire
2330 Grant Building
330 Grant Street
Pittsburgh, PA 15219
412.642.7667

3

1
2
3 * I N D E X *

4 Examination by Ms. Graham 4
5 Certificate of Court Reporter 94
6 Errata Sheet 95
7 Notice of Non-Waiver of Signature 96

8 * INDEX OF EXHIBITS *
9 Deposition Exhibit 1 82
10 Deposition Exhibit 2 82
11 Deposition Exhibit 3 82

4
5
6 DAVID WRIGHT,
7 having been duly sworn,
8 was examined and testified as follows:

EXAMINATION

BY MS. GRAHAM:

8 Q. Mr. Wright, we just met this morning. My name
9 is Kelly Graham, and I represent Mr. Rucker in a
10 case against the City and certain individual
11 police officers. I'm going to be asking you a
12 few questions today. I understand, based upon
13 your background, that you might have some
14 relevant information about the use of tasers in
15 the City of Pittsburgh Department.

16 If at any time you do not understand my
17 question, please let me know, and I'll be happy
18 to rephrase it. If you answer it, I'll assume
19 you understood it.

20 If you need to take a break at any time,
21 let us know that, and we'll be happy to
22 accommodate you, although I don't expect you to
23 be here very long today.

24 If you could please give a verbal response
25 to a question so that the court reporter doesn't

1 present or --
 2 A. From 2003 to 2007. The taser usage grew
 3 though. 2003 we only had approximately 100
 4 tasers on the street, if that's the year we
 5 initially started, because we bought 100 tasers,
 6 and then as we purchased and officers purchased
 7 more and more tasers, the use of tasers went up
 8 because more officers had them.

9 Q. In your training with the officers do you
 10 distinguish between using the OC spray versus
 11 the taser and one's better than the other?

12 A. Yes, ma'am.

13 Q. What do you teach?

14 A. The situation dictates. By and large
 15 statistically the taser is more effective.

16 There are going to be times when the taser is
 17 not going to be something that you want to use
 18 and OC spray would still be your best option.

19 Q. What type of example can you give me where you
 20 would not want to use a taser?

21 A. This time of the year perhaps, as we're moving
 22 into our winter season, people are going to be
 23 heavily clothed, and the taser won't be as
 24 effective because clothes act as insulation and
 25 so they won't feel the effects of a taser, so

35 1 lot of other factors you have to take into
 2 consideration.

3 Q. You mentioned a couple different resistance,
 4 passive, defensive, active, and you said
 5 something else.

6 A. Assultive.

7 Q. Assultive, okay. What is the distinction
 8 between passive and defensive in your mind?

9 A. A passive resister -- the most common passive
 10 resister would be a protester of some sort
 11 perhaps at an abortion clinic, maybe at a
 12 military recruiting center where they just sit
 13 down. When we use force we generally use it for
 14 defense or control. We need to somehow control
 15 this individual to move them along, and they're
 16 not doing anything other than just sitting there
 17 using dead weight. That's a passive resister,
 18 somebody that's just -- if you wanted me to get
 19 up off this chair and I said, basically, no and
 20 I just sat here, this would be a passive
 21 resistance.

22 Q. But you'd have to be picked up out of the
 23 chair.

24 A. I'd have to be picked up, or you'd have to use
 25 some sort of come-along hold, pressure point

33 1 perhaps OC spray would be a better option if
 2 somebody's dressed with thick clothing. If
 3 they're around combustible material you want to
 4 avoid the taser because the electrical discharge
 5 could possibly set off -- create a fire or
 6 explosion. So if I'm around gas, for example,
 7 I'll use my pepper spray versus the taser. So
 8 the environment may dictate, the situation may
 9 dictate.

10 Q. Explain to me, in your words, since you are the
 11 lead instructor when the use of a taser is
 12 appropriate. What level of force does that fit
 13 in with the City of Pittsburgh's policies?

14 A. It's a restraint control device, and the use of
 15 the taser is going to be very much incident
 16 specific. It's going to be based on the
 17 resistance being received.

18 Q. What level of resistance does an officer need to
 19 see in order to deploy that taser?

20 A. Generally it's going to be -- and this is a
 21 general statement, but anything above passive
 22 resistance. In other words, defensive
 23 resistance, active resistance, assaultive
 24 resistance on up. But, again, that's a very
 25 general thing for me to say because there's a

36 1 that develops some pain to make me want to move,
 2 something along those lines.

3 Q. In that type of scenario would you recommending
 4 that a taser gun be deployed?

5 A. For a passive resister using dead weight only we
 6 generally teach do not use the taser or pepper
 7 spray there.

8 Q. Okay.

9 A. At first.

10 Q. I'm sorry?

11 A. At first.

12 Q. Okay.

13 A. We'd start at come-alongs, pressure points,
 14 things of that nature.

15 Q. You also mentioned defensive resister. What
 16 does that mean?

17 A. Well, now say you want me to move and I start
 18 grabbing onto this chair, start holding onto the
 19 table, I start grabbing things, that would be a
 20 form of defensive or active resistance even.

21 You come at me, you put hands on me, I kind of
 22 shove you. I don't punch you, I'm not trying to
 23 hurt you, but you're going to need force on me,
 24 not necessarily for self defense purposes, but
 25 for control purposes. So you're going to have

1 to use force on me for control to effect an
 2 arrest, but I'm not trying to hurt you, I'm
 3 just -- you know, I'm grabbing on -- I'm holding
 4 on to something and you're not going to --
 5 you're going to have to do something to get me
 6 to move along other than just pick me up.

7 Q. Okay. In that type of scenario where you have a
 8 defensive resister, the way you've described it
 9 for this situation, what is it that you teach
 10 your officers, what steps they should do?

11 A. Well, we teach them a variety of options. At
 12 that level -- again, you have to look at the
 13 actor, you have to look at all kinds of things,
 14 what's the best options based on the resistance
 15 being received there. So you would have at your
 16 disposal for something like that perhaps pepper
 17 spray, perhaps the taser, perhaps the use of
 18 physical control. You may have to come in -- if
 19 I'm holding onto a chair, like the railing of a
 20 chair real hard, you might have to come down and
 21 punch my radial nerve to create pain to get me
 22 to let go of it, you might want to come down
 23 with a taser, use a taser on me to get me to let
 24 go of it. So you have options, the police
 25 officers have specific options, and those

37 1 options are based on what would work best.

2 Q. Okay.
 3 A. Obviously, keeping in line the rules and the
 4 laws that govern us as police officers too.
 5 Q. But in that circumstance where you have someone
 6 not attempting to hurt the officer, but holding
 7 on and not moving freely, you would teach that
 8 the use of a taser is appropriate?

9 A. It's possibly appropriate.
 10 Q. When you say possibly appropriate, what are the
 11 officers being taught? Are they allowed to use
 12 their discretion, is it basically, if you have
 13 this type of resistance, you have all these
 14 options available to you, pepper spray, taser
 15 and even physical.

16 A. (Witness nodding head up and down.)
 17 Q. You have to answer verbally for her. Is that a
 18 yes or a no?
 19 A. I didn't know you were done. I thought you were
 20 still talking.
 21 Q. Well, I'm going to do it piece by piece so that
 22 we -- I don't want to misunderstand you or say
 23 something you didn't say. If you have a
 24 situation where you have a defensive resister,
 25 as you've described it, let's use your example,

39 40

1 and I said in that circumstance would you teach
 2 your officers that it's appropriate to use the
 3 taser, and you said it is possibly appropriate.
 4 So I'm trying to understand where the line is
 5 for them. What are they being taught, or are
 6 they being said you need to use your own
 7 discretion?

8 A. You have to give me more. Is it an 80-year-old
 9 lady holding on to it? Is it a young man
 10 holding on to it? Is it a sizable man holding
 11 on to it? My force options will change based on
 12 the subject factors, the officer factors.

13 Q. Okay.

14 A. And they are taught discretion. A police
 15 officer can't be handcuffed on it, this has to
 16 be this way. We have to look at specifics of
 17 that incident. So, you know, they're taught
 18 force options, and they learn best techniques
 19 through training, through experience, through
 20 education. So I just can't blindly say this is
 21 a taser in this case, this is a hands-on in this
 22 case. There's a lot of other factors you have
 23 to take into account. You know, if I have an
 24 older, elderly person, I might go for a
 25 come-along hold, I might come and just try to

1 pull them out. If I have somebody younger and
 2 in shape, you know, I might have to go with a
 3 strike. If I have somebody where I don't think
 4 a strike is going to be very effective, you
 5 know, the body language, that's another form of
 6 resistance we haven't talked about, body
 7 language, that tells you a lot. If I'm sitting
 8 here and I'm staring at you, I'm giving you this
 9 look, you know, it kind of tells you maybe I'm
 10 going to assault you, it's reasonable to assume,
 11 you know, the eyes and my body language, the
 12 intensity, you know, I might say to myself I'm
 13 not going to touch this individual because if I
 14 go close to this person, an assault is imminent,
 15 so I'm going to use my taser because I can end
 16 this safely and legally through distance. So
 17 the taser may be applicable sometimes, and
 18 sometimes, you know, it might be more applicable
 19 to go hands-on. You have to look at the
 20 specifics. So I can't just generally say taser,
 21 hands, I have to look at, you know, a specific
 22 incident and say, okay, this would have been a
 23 good time for the taser.

24 Q. Does the City of Pittsburgh have a force of
 25 continuum?

1 taser one time, and that was on a dog.

2 Q. In intermediate force you mentioned the baton,
3 are there other weapons that the officers can
4 carry besides the baton that would fit into that
5 category?

6 A. Impact weapons would be -- instead of using the
7 term batons, I would just say impact weapons, so
8 it would be a flashlight perhaps, a blackjack,
9 the use of a radio, environmental impact
10 weapons, officers have had to use -- I've read
11 reports where officers have had to use toilet
12 seats as impact weapons.

13 Q. Okay. As part of your responsibilities in
14 reviewing these use of force reports, have you
15 ever investigated or looked into a use of force
16 report that was not red flagged? In other
17 words, it's in your stack, and you're going
18 through it and something in your mind seems not
19 right, have you ever had occasion to have that
20 happen?

21 A. Yes, ma'am.

22 Q. Can you give me any idea of how often that might
23 have happened in your career?

24 A. I'd say a couple times a year I'll be reading a
25 report, I'll read a report and I'll have to --

1 way or the other, it puts their safety at risk,
2 they don't use enough force. They're legally
3 allowed to use this amount and they don't.

4 Q. Did you provide any input based upon your
5 certifications and the training you had into the
6 City of Pittsburgh's taser use policy?

7 A. Yes, ma'am.

8 Q. What input did you provide, what was your role?

9 A. I provided a fair amount of input in terms of
10 getting other department's policies, looking at
11 best practices across the country, looking at
12 policies that Taser could compile for me, some
13 of their recommendations, also -- not just
14 Taser, we looked at Stinger, which is their
15 competitor, we looked at some of their
16 recommendations. We look at also things that
17 are going on, trends that -- for example,
18 cuffing under power. The policy is made up of a
19 lot of best practices through departments and
20 through manufacturers across the country, and a
21 lot of that was compiled by me.

22 Q. Okay. Am I correct that the City of
23 Pittsburgh's use of force policy related to
24 tasers would -- obviously it would fall under
25 the restraint and control section of the --

45 1 you know, not just taser related, but just
2 officer safety related where, you know, the
3 officer maybe should have done this or done this
4 and it really affected their safety, or maybe it
5 was a force issue. I'll make my supervisors
6 aware of it, and what they'll do is we'll
7 address it and we'll retrain them.

8 Q. When you say use of force issue, that's a
9 circumstance where you may have thought the
10 officer did not use the appropriate level of
11 force?

12 A. Oftentimes they don't use enough force.

13 Q. Okay. In your role have you ever found that an
14 officer actually used too much force?

15 A. I would have to go back and look at all of my
16 reports and everything, but yes, yes, I have.

17 Q. Do you have any idea how many times you've
18 actually determined that an officer might have
19 used too much force in a situation?

20 A. No, I don't have a number on it. I can tell you
21 it's not often. Truthfully, the reports I read,
22 the reports reveal that officers by and large
23 don't use enough force. Let me rephrase that.
24 For the vast majority they're right on the
25 number, but when an officer seems to error one

47 1 A. Yes, ma'am.

2 Q. -- continuum? Okay. I guess where I'm -- and
3 it's probably me being confused, but where I
4 have a question is once an officer -- they're on
5 the scene, if verbal direction is possible and
6 they try it and it's not working, when they get
7 to that third level, do the officers have the
8 discretion to use any of the -- let's take
9 canine out of it in case they would have to be
10 called, six different types of deployments, can
11 they use any of those -- once they hit that
12 level, are they free to use any one of those?

13 A. Based on the resistance being received.

14 Q. Okay.

15 A. Again, you have to look at, you know, as I was
16 talking earlier, you know, a lot of other
17 factors, officer/subject factors, prior
18 knowledge. If I come across somebody and I have
19 prior knowledge and he's maybe let's say 5'5 and
20 140 pounds and he's giving me this, on the
21 surface that doesn't appear, but I have prior
22 knowledge, hey, this guy is a professional
23 boxer, it's going to change how I do business.
24 Age plays a factor. As I mentioned, the
25 80-year-old lady versus somebody that's younger,

1 a male, stronger, that's going to play a
2 difference. But they have to look at that. And
3 they've been -- you know, they're taught
4 reasonable force, reasonable force, we hit that
5 point in our training, and they have to use
6 their education, their knowledge, their training
7 to pick the most reasonable force option out of
8 restraint and control.

9 Q. Okay.

10 A. There's no black and white to use of force. You
11 know, you have to pick what's reasonable based
12 on the scenario.

13 Q. I understand that I think, I'm just trying to
14 understand from the prospective of what these
15 officers are being taught, and I understand
16 obviously, I'm sure you're teaching them use
17 your best judgment in every situation.

18 A. We teach them Graham vs. Connor, we teach them
19 about policies, we teach them the federal
20 guidelines, we teach them the state laws, we
21 teach them about policies and we teach them how
22 to be trained on specific tactics too, and then
23 with that they take all that knowledge and they
24 go out in the street and they make the decision.

25 Q. Okay. And I guess where I'm trying to -- and

1 you may not be able to give me an answer to my
2 specific question, but what I'm trying to
3 understand is based upon looking at policies and
4 some of the other testimony that I've had, when
5 you get to the point where you need to use some
6 form of restraint and control, are the officers
7 allowed to use their discretion as to which they
8 pick? Even if it's not what you would have
9 picked, are they still completely okay if they
10 pick any of the six regardless of whether or not
11 you felt they should have picked the six or,
12 when they're in this category of restraint and
13 control, are they still supposed to try the
14 come-along first or try the pressure points or
15 try the OC spray, or can they just walk in and
16 say I told you to stop doing it, you're not
17 doing it, boom, here's the taser?

18 A. They're taught to use the best option based on
19 the resistance being received. So they're not
20 taught like a ladder, you have to go boom, boom,
21 boom, boom, absolutely not. In fact, they're
22 not even taught -- they might have to -- all of
23 a sudden they might come into it and, you know,
24 they have that knowledge, we have that boxer
25 again, all of a sudden the fists come up and, to

1 be honest with you, I have a professional boxer
2 coming at me with fists, I'm drawing my firearm
3 and getting behind the car. I'm not going to
4 take a punch to the face with a professional
5 boxer.

6 Q. Okay. When you're teaching them the constraint
7 and control, let's take immediate and deadly
8 force out of the picture, that's not in our
9 scenario for this question, when you're teaching
10 them the restraint and control, as I understand
11 then, you do not teach them to try this method
12 before you try this method, there's no basic
13 order?

14 A. Sometimes we do, sometimes we don't.

15 Q. What do you mean sometimes you do, sometimes you
16 don't?

17 A. Let's say we have that 60 or 80-year-old lady.
18 MR. CAMPBELL: She's getting younger.

19 BY MS. GRAHAM:

20 Q. I'm trying to think am I going to be safe at
21 some point.

22 A. Let's say we have that 80-year-old lady and you
23 try the come-along hold and it doesn't work,
24 then you might have to systematically go up that
ladder so to say, but you arrived there and it's

1 reasonable to assume that, hey, you know, based
2 on the officer/subject factors, even starting at
3 this lower level -- for example, bring it back
4 down to that 25-year-old man and he's showing
5 body language, it would be reasonable to assume
6 if I go in here hands-on, I'm running the risk
7 of hurting -- getting myself put into a position
8 where I might be hurt, where, okay, the law's
9 allowing me -- because we don't have to use the
10 least level of force, the law doesn't say that,
11 we have to use the most reasonable. And that's
12 why officers don't use enough force because they
13 get in this mind set we have to use the least or
14 the minimum amount of force, that's incorrect.
15 Police officers do not have to use the minimum
16 amount. We have to use force that's necessary
17 and reasonable and it's based on the incident,
18 and Graham vs. Connor, which is the landmark
19 case in use of force, it makes provisions
20 saying, hey, this officer might choose this,
21 this officer might choose this, you might choose
22 this, you know, because what we perceive and how
23 we handle things are going to be different, but
24 they're basically around the same levels. So
25 what we try to do is these are around the same

1 that point.

2 Q. Okay. Is that something that you would question
3 an officer about when you're reviewing these
4 reports?

5 A. That may be something that I would question an
6 officer about.

7 Q. But as I understand, and tell me if I'm wrong
8 from your earlier testimony, based upon the City
9 of Pittsburgh's policy, an officer, once they
10 reach that level of resistance -- restraint and
11 control, excuse me, is he within his legal
12 rights to pull the taser on her?

13 A. To pull the taser?

14 Q. To deploy it, I'm sorry.

15 A. (Gesturing.)

16 Q. I'm not trying to trick you, all I'm trying to
17 understand is when they get to this step, can
18 they utilize any of these techniques without
19 there being any Monday morning quarter backing
20 from you or anybody else? If they said, hey, I
21 tried these two things, they didn't work, are
22 all of these options equally available to them
23 under any situation?

24 A. Well, it goes on probability of injury
25 generally. For example, the soft empty hand

1 control carries with it a lower level of
2 probability of injury and then as you go down
3 to -- what's the last one I have on there,
4 probably hard empty hand control, there's a
5 higher probability of injury, and then what's in
6 between it, that's how we try to list the
7 probability of injury. So is anything on the
8 table, we're looking at -- we look at, again,
9 the incident itself. Would that taser be a
10 force option available? Yes, it would be a
11 force option possible to that officer given the
12 circumstances. Is it the best force option?
13 Maybe not.

14 Q. Okay. Injury to whom? You said we look to the
15 injury --

16 A. Both. For example, we teach somebody to punch
17 somebody, we teach them to punch them as hard as
18 we can. Why? Because that makes it safer for
19 the actor, it makes it safer for the officer
20 because if I have to only hit once, I don't have
21 to hit you five, six times, which means I'm not
22 hitting all these different areas, which means
23 maybe I can, you know, end the use of force
24 encounter. The longer the use of force
25 encounter plays out, the higher the potential

1 for injury for both the officer and the actor.

2 THE WITNESS: If it's possible, I need
3 to use the restroom.

4 MS. GRAHAM: Sure.

5 -----

6 (Whereupon, there was a brief pause in
7 the proceedings.)

8 -----

9 BY MS. GRAHAM:

10 Q. Just before the break we were talking about --
11 you mentioned the officers are taught about the
12 level of injury. And using just the restraint
13 and control category, what would the order of
14 level of injury to someone be generally taught?
15 I understand there's going to be exceptions to
16 every rule, but generally what are they taught?

17 A. Generally, the probability of injury. In other
18 words, a soft empty hand, use of a pressure
19 point carries with it a lower probability of
20 injury than, if I would say, use a closed fist
21 punch.

22 Q. Where would OC spray or taser fit into that?

23 A. Generally, it goes at the lower end, there's a
24 lower probability of injury, so you'd have your
25 come-along holds, pressure points, just

1 underneath that you'd have your taser and pepper
2 spray, OC/taser because they're considered about
3 the same.

4 Q. Are you given any training on the effects of the
5 taser on the person who's actually -- that it's
6 been deployed into?

7 A. Have I been given any training on it?

8 Q. Yes. What is your understanding as to what
9 injury, if any, a taser can cause?

10 A. Well, I know firsthand, I've been hit with a
11 taser several times.

12 Q. Are you one of those ones that volunteered to
13 be --

14 A. I've felt the effects of the M26, the X26 and
15 the C2 on more than one occasion, so I've been
16 under the effects of a taser.

17 Q. We'll talk about what happened with your
18 personal experience with the taser, but what
19 training, if any, does the City provide you as
20 to what injury it can cause?

21 A. Well, first, the highest probability for injury
22 with the taser, if you're going to get hurt with
23 the taser, it's going to be the fall because
24 you're incapacitated and you're going to fall to
25 the ground. So it's what we call a secondary --

the injury is secondary. It's not the taser, it's the fall.

Q. Okay.

A. So if injury is going to occur, it's going to be from the fall. There is a potential risk for connective tissue damage perhaps because your muscles contract. I always say it's like a really hard workout and then some because your muscles are contracting. When you get the taser deployed on you, the greater the spread, the greater the effectiveness. In other words, if the taser is deployed here and it's deployed here (indicating), my muscles throughout my whole body are going to be contracting hard. If it's more like in the leg, then it's going to be central to that leg itself. So you're looking at possible, you know, connective tissue injury. So there's some injury potential perhaps, you know, if you hit a sensitive area. For example, a taser probe is deployed and it goes into the eye, obviously you're looking at potential injury there too. So in regards to injury potential, it's addressed.

Q. Are the officers taught where they should deploy the taser, is there a --

65 A. We do teach them preferred areas.

Q. What are the preferred areas?

A. Well, you know, and they're not always possible. Preferred areas are going to be -- the most preferred area, but an area that is hard to access oftentimes, is the back.

Q. Why would the back be one of the preferred areas?

A. Less likelihood of a sensitive area being hit with the taser.

Q. Okay.

A. And also the back itself carries with it a lot of muscle mass, and you're not going to find -- bodies don't retain a lot of fat in the back, so we can access the muscle. Because fat in itself acts as an insulator. If you strike somebody in the abdomen and they have a big belly, the current needs to go through the belly, it's going to give you less effect perhaps. So on obese people the taser is not going to be as effective.

Q. Okay. Any other preferred areas besides the back that they're taught, that you teach?

A. Sure, we teach the best case scenario, you know, you're trying to increase the belt line so that

67 1 you can get the legs and the upper body and the
2 lower body affected so that you can incapacitate
3 the entire body for that five seconds.

Q. So if I understood your answer, you teach them, if possible, to try to shoot so that the belt would be -- the one taser would go above it and one would go below it?

A. Yes, and we also teach -- well, that's one of the options, of course, if you're facing somebody frontal, you know, then we would teach kind of a torso shot.

Q. Is there a reason for the torso?

A. Again, we try to get the upper body and the lower body effect. The preferred range, the optimal range seven to fifteen feet and that's so that we can get the entire body effect. The greater the spread, the greater the effectiveness. That's not always possible.

Q. Do you teach the officers acceptable ranges to use the taser as of you can't be too far away, you can't be too close, are there any guidelines for that taught to the officers?

A. We teach them preferred, seven to fifteen feet is the optimal range, because at this range you have the best of both worlds, you're going to be

68 1 accurate and you're getting a nice spread.
2 There are going to be times though we teach
3 where we can deploy that taser -- I tell them
4 get a frog's hair away. I don't know how big a
5 frog hair is, but I imagine it's pretty short.
6 In other words, I can press that taser right up
7 on the arm and deploy it, you may have to do
8 that, close quarter combat, close quarter
9 fighting, close quarter defense. The
10 distance -- you know, now, I tell people if you
11 start getting 21, 25 feet out, odds are you're
12 going to miss them. It's more of an issue of
13 missing. And as you move in closer, my spread
14 gets diminished so the taser won't be as
15 effective. So if I'm right on top of you or
16 you're on top of me and I use it in defense and
17 I just get the probes right here (indicating),
18 it's really going to be really just a pain
19 compliance affecting that radial nerve in the
20 forearm area, and I still have my entire body to
21 fight you with. We like that seven to fifteen
22 feet. As you move in closer the spread is less,
23 so the possibility for it not being as effective
24 is there. As you move out further the
25 probability for missing is greater.

1 A. Yes.
 2 Q. And those reports, we can agree, they don't have
 3 any details in them, I think they just check
 4 numbers, what type of an arrest was made and
 5 then they give you the order of force that they
 6 use?
 7 A. They give you the order of force, they give you
 8 the order of resistance, they give you any
 9 injury information to both the actor and the
 10 officer, the back page of it would.
 11 Q. Okay. In that situation is that officer
 12 required to give you any narrative describing
 13 the situation or you're just going off those
 14 boxes that are checked and the numbers that are
 15 given to you?
 16 A. I'm going off all the reports of the incident.
 17 Q. So when you get the subject resistance report
 18 you also get, along with it, the arrest report
 19 and the investigative report for every --
 20 A. I get all the reports that come with it, yes.
 21 Q. So do you review every report for every subject
 22 resistance you're given?
 23 A. Every report.
 24 Q. So you would have reviewed these reports back
 25 around the time that it happened?

1 Mr. Rucker out of the car and Mr. Rucker was not
 2 resisting, defensively, aggressively, he was
 3 asking why he was being stopped and pulled out
 4 of the car, if a third officer arrived on the
 5 scene and tased him as he was being pulled out
 6 of the car, is that something that you would
 7 want to look into further that would send up a
 8 red flag?
 9 MR. KENNEDY: I object to the form.

10 BY MS. GRAHAM:

11 A. How was he resisting?
 12 Q. He wasn't resisting. He was being pulled out of
 13 the car, officers grabbed him by each arm to
 14 pull him out of the car.

15 MR. KENNEDY: Same objection.

16 BY MS. GRAHAM:

17 Q. And the third officer tased him as he was being
 18 pulled out of the car.

19 MR. KENNEDY: Running objection to
 20 form as to any questions requesting his opinion
 21 of this matter.

22 BY MS. GRAHAM:

23 A. I would say he was probably resisting because
 24 why did they have to pull him out of the car?
 25 If they asked him and he didn't come, that's a

77 1 A. Yes, ma'am.
 2 Q. Did you review them again since the lawsuit was
 3 filed?
 4 A. Yes, ma'am.
 5 Q. I'm assuming -- well, let me not assume, back
 6 when the incident happened do you actually
 7 recall reviewing that report?
 8 A. No, ma'am.
 9 Q. Would it be fair to say there was nothing about
 10 that report that sent up a red flag in your
 11 mind?
 12 A. No red flag, ma'am.
 13 Q. Okay. In reviewing the report again was there
 14 anything about the use of force that sent up a
 15 red flag?
 16 A. No, ma'am.
 17 Q. Were you aware that Mr. Rucker has indicated
 18 that he did not engage in any type of defensive
 19 resistance at the scene?
 20 A. No, ma'am, just what the report read.
 21 Q. Hypothetically speaking, if Mr. Rucker, who is a
 22 male in his twenties was stopped and there were
 23 two officers on the scene with him and told him
 24 to stay in his vehicle until backup arrived, if
 25 they then proceeded to open the door and pull

79

80 1 form of resistance in itself.
 2 Q. What if they didn't ask him? They opened the
 3 door -- once the third officer arrived they
 4 opened the door and pulled him out of the car.
 5 A. Is there a reason, is there a gun sitting next
 6 to him?
 7 Q. No, there's no weapon.
 8 A. If the individual's just sitting there, for
 9 example, if I was just sitting here like this on
 10 a traffic stop and all of a sudden the door
 11 opened, the police pulled me out of the car and
 12 tased me, yes, it would raise a red flag.
 13 Q. I'm asking this based upon your experience in
 14 teaching this for ten years and your
 15 certifications and what you actually teach your
 16 officers. Now, obviously the officers testified
 17 differently, they testified that he was being,
 18 what I would think you would call a defensive
 19 resister, that he was holding onto the steering
 20 wheel and would not get out of the car. In that
 21 situation, if we accept what the officers said
 22 was true, and they ordered him to get out of the
 23 car and he did not get out of the car, he was
 24 asking why are you doing this, why are you
 25 trying to get me out of the car and he held onto

the steering wheel as one of the officers said he did, the third officer, Marabello arrives on the scene and tells everyone to stand back, goes into the car and tases him, do you believe that would have been appropriate use of force under those circumstances?

MR. KENNEDY: If I could stop you a second. Do you want to add what Officer Novac said as well.

MS. GRAHAM: What did --

MR. KENNEDY: About the officer physically attempting to get him out by grabbing him and pulling him.

BY MS. GRAHAM:

Q. Schrock filed a supplemental report after the fact saying he tried a come-along first. That wasn't in the initial report, he filed that a couple days later. He tried a come-along, and that did not work. But Marabello wasn't on the scene for that point, he came as they were trying to get him out of the car. In that situation, he's not threatening them, he's not screaming at them, he's not assaulting them, but he is holding onto the steering wheel according to one of the officer's testimony. Would that

be appropriate use of force in your mind?

A. Yes.

Q. Okay. In the other scenario that I gave you, which is somewhat different, where he was not resisting in any way and there was no threat to him, but the door was open and the officers, two officers began to escort out and a third officer tased him while he was being escorted out, that is something that would send up a red flag in your mind?

A. Yes, because then there's no resistance, you don't need to use force.

(Deposition Exhibit Nos. 1 through 3 were marked for identification.)

BY MS. GRAHAM:

Q. Mr. Wright, I'm showing you three different exhibits that have been marked 1, 2 and 3, and these are policies from the City of Pittsburgh, and some of them, I think, we might have referenced during your deposition, so I want to just make sure we were talking about the same policies. The first one is, I believe, the Continuum of Control Policy; is that correct?

(Whereupon, the witness reviewed the document.)

BY MS. GRAHAM:

A. Yes, ma'am.

Q. Have you seen this document before?

A. Yes, ma'am.

Q. Is this something that you train your officers on when you receive these updates or reissue dates?

A. On reissue dates they are at the zones, the supervisors go over any changes.

Q. Okay. This particular Continuum of Control Policy which has been effective date of 3-23 of 2007, did you participate or provide any input in your capacity as the lead instructor for this particular policy?

A. Yes, ma'am.

Q. What input did you provide?

A. Specifically, if you go to the last page, Page 3 of 3, you'll see that the circle that's provided there, that was put in there based on my recommendation, and the reason why is because we are trying to get our officers into the mind set

that you pick the most reasonable force option based on the specific incident that you're dealing with, and we are trying to get away from this ladder mentality where you go step one, two, three, four, we're trying to get away from that. So we felt that this was a better system, this pie graph would be better served. Some agencies have gotten away from -- the Federal Law Enforcement Training Center, FLETC, they've gotten away from training force continuums altogether because they realize Graham vs. Connor changed, you know, the use of force and so now it's very specific, you have to look at that incident. It's easier to teach this method versus the ladder method.

Q. In looking at this chart that's at the bottom of that page, it seems to be on the outside of the five different levels of the continuum of control, is that correct, verbally noncompliant?

A. Yes.

Q. I'm sorry, I misspoke, the ones on the inside are the --

A. Options.

Q. -- options for continuum of control levels; is that correct?

1 A. Yes, ma'am.
 2 Q. Okay. And the ones on the outside seem to be
 3 the type of resistance you can encounter?
 4 A. Yes, ma'am.
 5 Q. Under passive resistance --
 6 A. Yes, ma'am.
 7 Q. -- it seems to be over the heading of verbal
 8 control; is that correct?
 9 A. It's in the order of verbal control and -- it's
 10 hard to see because of the copy, you would have
 11 these lines, and these lines come out and you
 12 actually would have, you know, passive
 13 resistance comes out slightly over here so this
 14 graph gives you -- because basically, we want to
 15 resolve passive resisters through verbal control
 16 and these techniques of communication, but then
 17 when that fails, you know, and this is, you
 18 know, given -- there's room for this stuff to
 19 start coming into play.
 20 Q. Are your officers trained to attempt to not to
 21 use the restraint and control if they have a
 22 passive resistance, are they basically trained
 23 don't go there unless you absolutely have to?
 24 A. We train our officers when dealing with the
 25 passive resister to try to use verbal

85

1 communication and use your officer presence to
 2 successfully end this problem.
 3 Q. Are they given any instruction or direction,
 4 whatsoever, as to when you have a passive
 5 resistance, if you need to go into restraint and
 6 control, try this first?
 7 A. When words fail and you have to go hands-on, we
 8 teach -- for passive resister, and generally,
 9 again, that is body weight, we're just using
 10 body weight, then soft empty hand control is
 11 going to be your most reasonable force option.
 12 Q. Are they told, basically, to try that first
 13 before they resort to the spray or the taser or
 14 the empty hand?
 15 A. For a passive resister, yes.
 16 Q. Okay. This particular chart, is it supposed to
 17 be shaded in, is that what you're telling me?
 18 A. Yeah, there's -- it's not the best copy in the
 19 world.
 20 Q. Is there an original I could maybe see? Do you
 21 have something that would have the shaded in
 22 area a little better that I could look at, at
 23 some point?
 24 MR. KENNEDY: Do you want me to grab
 25 mine? I might have a better copy right now.

87

1 MS. GRAHAM: If you do, that would be
 2 great.
 3 -----

4 (Whereupon, there was a brief pause in
 5 the proceedings, and the witness and Ms. Graham
 6 reviewed the document.)
 7 -----

8 BY MS. GRAHAM:
 9 Q. Mr. Wright, looking at -- Mr. Kennedy brought up
 10 a little bit of a clearer graph. On your
 11 exhibit, and I realize this is an estimation,
 12 can you just draw in there with a line with a
 13 pen where you believe the graph, basically,
 14 should be on the exhibit copy?
 15 A. I'm not an art major.
 16 Q. It looks like it kind of goes to the V of
 17 passive, is that correct, this shaded area
 18 (indicating)?
 19 A. Yes (marking document).
 20 Q. And then the shaded area on the opposite side
 21 seems to go to about the E.
 22 A. (Marking document.) You can see restraint and
 23 control has a wider range.
 24 Q. Next, Exhibit 2, I think that might be use of
 25 force of taser or taser policy, I'm not sure

88

1 what order I gave those to you?
 2 A. The taser policy is Exhibit 2.
 3 Q. Okay. In this particular taser policy did
 4 you -- this one has an effective date of 3-10 of
 5 '04. Do you know if there's a more up-to-date
 6 policy? It was reissued on 1-3 of '05, so 1-3
 7 of '05 is the latest date we have on here.
 8 A. I don't know off the top of my head if there's a
 9 more current policy.
 10 Q. Did you participate in any way in providing
 11 input into this policy?
 12 A. Yes, ma'am.
 13 Q. What input did you provide?
 14 A. At one point, I actually made this policy and
 15 then typed it, I should say. They gave me the
 16 template, I typed it and I sent it on up to -- I
 17 want to say at the time either Lieutenant Dixon
 18 or Lieutenant Beidle, whoever was responsible
 19 for helping to complete this, and I took what I
 20 thought was the best policies of the various
 21 departments across the country, and I took what
 22 I thought was their best practices, and I took
 23 into account our policy on use of force, Chapter
 24 Five of the Crimes Code, put it altogether, and
 25 I put, what I thought was, the best of the best

86

down and submitted it. Now, I know that Commander McNeilly had a lot of say in helping to design this too, Commander Catherine McNeilly, because, as I recall, she, on Page 4 of 6 -- she or her office helped design this taser probe, successfully discharge this little graph you see, her office had a lot to do with developing this. So I'm not the only person that helped design this, there was input. And we did gather input from other departments too.

Q. Okay. Under 5.2, this taser policy, it says situations in which the use of taser may be authorized include, but are not limited to, the following, and then it lists four examples. Do you see that?

A. Yes, ma'am.

Q. Is that information that you provided, or did that come from somebody else?

A. I don't know as I sit here and read this.

Q. You don't know then why those four particular situations were identified in this policy?

A. Let me read it.

Q. Sure.

(Whereupon, the witness reviewed the

Q. Do you recall what input you provided?
A. We had a use of force committee, so a lot of us -- for me to say that this is me, I can't say that. It's a lot of input from a lot of people. That's true pretty much on all our policies, it's not one person, there's a lot of input from a lot of people.

Q. In your role do you have any responsibility to review these policies to determine whether or not they should be updated in any way? Like, for example, this policy Exhibit 3 is over four years old, did you play any role in reviewing them or do you know who does review them to determine whether or not the policies should be updated?

A. They are reviewed and updated as needed on pretty much, I'll say, an annual basis. All our policies are. I believe Lieutenant Jennifer Beidle handles that. And if it has to do with something that's in my area of expertise, then she calls me and she and I or whoever will go over it. So she's actually a person that I'm in constant contact with with these types of policies, use of force, because she's -- one of her jobs, and I believe it's in the intelligence

89
1 document.)
2 -----
3 BY MS. GRAHAM:

4 A. What's put in here are good examples of taser
5 usage, cite some examples.

6 Q. But you don't recall if you provided these, so
7 it would be hard for you to say why these four
8 specific examples are listed; is that correct?

9 A. I'm pretty confident that they're listed because
10 they're good examples of possible times to use
11 the taser, I'm pretty comfortable in saying
12 that.

13 Q. Okay. Do you know why only these four types of
14 situations were listed?

15 A. Just examples. These are good -- prevent
16 somebody from hurting themselves, it's a good
17 example, this is something we want to show our
18 officers.

19 Q. Exhibit 3 is the City's Use of Force Policy,
20 reissue date of 1-3 of '05. Do you know if
21 that's the most recent use of force?

22 A. I believe it is.

23 Q. Did you participate in providing any input into
24 this policy?

25 A. I was one of the participants.

section, that she's handling a lot of these policies and making sure that they're reviewed and updated as needed.

Q. So if she felt that the taser policy, which Exhibit 2 is again over four years old, needed to be updated, she would, in all likelihood, contact you since you're one of the instructor -- you're the lead instructor who would be teaching officers about taser use; is that correct?

A. Yes, and I believe that no motor -- I believe since the federal consent decree took place back in the late '90s, that was one of the things that -- they have to be reviewed anyway. If they're following this procedure, I believe, and that's why I believe she does do it, and she's been doing it. They're going to be reviewed -- I believe they're going to be reviewed no matter what on a certain level. I don't know if it's annual, biannual, I don't know what the time is, but I believe they are reviewed at a certain time regardless.

Q. But as far as you can recall sitting here today, you don't recall there being a more recent taser policy than four plus years ago or use of force